

EMERGENCY

City of Cincinnati

J.P.P. 11/12/04

An Ordinance No. _____

- 2004

ORDAINING new Chapter 872, Sections 1-13 of the Cincinnati Municipal Code to provide for residential lease option contracts.

WHEREAS, the Council of the City of Cincinnati has previously expressed its desire to protect citizens and neighborhoods from predatory practices that hurt citizens and the City of Cincinnati; and

WHEREAS, in order to protect citizens and neighborhoods from predatory practices, it is necessary to provide for residential lease option contract requirements and guidelines; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That new Chapter 872, Sections 1-13 of the Cincinnati Municipal Code is hereby ordained to read as follows:

Chapter 872

RESIDENTIAL LEASE OPTION CONTRACTS

Sec. 872-1. Definitions.

For the purpose of this chapter the words and phrases defined in the sections hereunder shall have the meaning respectively ascribed to them, unless a different meaning is clearly indicated by the context.

(a) "Residential Lease Option Contract" means an executory agreement, without regard to its title or description, or composition with regards to the number of separate documents which make up said agreement which: 1) by its terms is not required to be fully performed by one or more of the parties to the agreement within one year of the date of the agreement; 2) purports to confer on a tenant some right, whether qualified or unqualified, to purchase the landlord's interest in the real property that the tenant occupies or intends to occupy at a future date as specified in the agreement; and 3) the tenant agrees to pay an option fee upon execution of the agreement and rent during the term of the contract; and 4) where the landlord retains legal and equitable title to the property until such time as the tenant successfully completes the purchase of the property.

(b) Agreements commonly known as lease option agreements or rent to own agreements pertaining to real property that purport to confer on a tenant some right, whether qualified or unqualified, to purchase the landlord's interest in the real property

that the tenant occupies or intends to occupy shall not be deemed a "lease option agreement", a "option contract for the purchase of real property" or "lease with option to purchase agreement," but shall be deemed a residential lease option contract. Residential Lease Option Contracts are considered rental agreements under Chapter 5321 of the Ohio Revised Code. However, residential lease option contracts do not include any of the following:

- (1) A lease for agricultural, business or commercial purposes
- (2) A lease made to an organization
- (3) A lease of money, personal property or intangible personal property
- (4) A lease of a motor vehicle as defined in Section 4501.01 of the Ohio Revised Code

(c) "Property" means residential real property, located within the City of Cincinnati corporate boundaries, improved by virtue of a dwelling having been erected on the real property.

(d) "Landlord" means the owner, lessor, or sublessor of residential premises, the agent of the owner, lessor, or sublessor, or any person authorized by the owner, lessor, or sublessor to manage the premises or to receive rent from a tenant under a rental agreement per Section 5321.01 (B) of the Ohio Revised Code.

(e) "Tenant" means a person entitled under a rental agreement to the use and occupancy of residential premises to the exclusion of others per Section 5321.01 (A) of the Ohio Revised Code.

(f) "Option fee" means any amount that a tenant pays for the right to purchase at a future date, the property that the tenant occupies or intends to occupy.

(g) "Legal description" means a description of the property by metes and bounds or lot numbers of a recorded plat including a description of any portion of the property subject to an easement or reservation, if any.

(h) "Option Agreement" means the executory contract defining the terms and conditions under which the tenant may purchase the property, where a separate lease contract and option contract are used, or the portion(s) of the contract defining same, where a single contract is used.

(i) "Option to Purchase" means the tenant's right, whether qualified or unqualified, to buy the real property under the price and terms outlined in the Residential Lease Option Contract.

(j) "Purchase Price" means the price at which the landlord agrees to sell, and the tenant agrees to buy, the real property upon successful completion of the Residential Lease Option Contract and exercise of the Option to Purchase.

(k) "Rent Credit" means a portion of the monthly rent, which is applied toward the Option Price under certain circumstances in some Residential Lease Option Contracts.

(l) "Lease Agreement" means the contract defining the terms and conditions of the tenant's continued tenancy in the real property, where a separate lease contract and option contract are used, or the portion(s) of the contract defining same, where a single contract is used.

Sec. 872-3. Severability.

If any provision or clause of this chapter or its application to any person or in any circumstances is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter shall be severable.

Sec. 872-4. Obligations of landlords and tenants.

The obligations of the landlord and tenant shall be as contained in Chapter 5321 of the Ohio Revised Code, including but not limited to the following:

- (a) A landlord who is a party to a rental agreement shall:
 - (1) Comply with the requirements of all applicable building, housing, health, and safety codes that materially affect health and safety;
 - (2) Make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition;
 - (3) Keep all common areas of the premises in a safe and sanitary condition; and
 - (4) Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, and air conditioning fixtures and appliances, and elevators, supplied or required to be supplied by him.
- (b) A tenant who is a party to a rental agreement shall:
 - (1) Keep that part of the premises that he occupies and uses safe and sanitary;
 - (2) Dispose of all rubbish, garbage, and other waste in a clean, safe, and sanitary manner;

- (3) Keep all plumbing fixtures in the dwelling unit or used by him as clean as their condition permits; and
- (4) Use and operate all electrical and plumbing fixtures properly.

Sec. 872-5. Minimum contents of residential lease option contract; formalities.

(a) The lease portion of the Residential Lease Option Contract shall conform to Chapter 5321 of the Ohio Revised Code.

(b) In addition to the landlord duties and tenant duties prescribed in this Chapter, and Chapter 871 of the Cincinnati Municipal Code, every Residential Lease Option Contract shall be executed in duplicate, and a copy of the contract shall be provided to the landlord and the tenant.

(1) The words "THIS IS NOT A CONTRACT TO BUY. THIS CONTRACT GIVES YOU THE RIGHT TO BUY THE PROPERTY DESCRIBED IN IT. YOU WILL NOT OWN THE PROPERTY UNTIL YOU FULFILL THE TERMS OF THIS CONTRACT AND FIND FINANCING TO PAY THE PURCHASE PRICE IN FULL." shall be printed in bold face type, all caps, and be no smaller than 14 pt. font; both on the top of the first page of any contract setting forth the terms of the Option to Purchase and again directly above the tenant's signature on the same contract.

(2) The following statements shall be printed clearly and conspicuously in bold face type, in the same size type used for the text of the contract and in close proximity to the statement of the amount of the option fee:

(a) "The tenant is renting this property and has all the rights enjoyed by any other residential tenant in the City of Cincinnati;

(b) In addition, the tenant has paid a fee of \$_____ (the amount of the option fee) for the right to purchase the property located at _____ (street address of the rental property), Cincinnati, Ohio _____ (zip code of the property);

(c) If the tenant does not pay the monthly rent or violates other terms of the lease, the tenant may be evicted and lose their option fee."

(c) The Residential Lease Option Contract shall also contain at least the following provisions:

(1) The full names and then current mailing addresses of all the parties to the contract;

- (2) The date when the contract was signed by each party;
- (3) A legal description of the property;
- (4) The amount of tenant's monthly rent;
- (5) A statement outlining which, if any, expenses of closing and sale will be paid by the landlord and which, if any, will be paid by the tenant;
- (6) The price at which the parties have agreed that the tenant may purchase the property (also include any adjustments that may be made to the purchase price in dollar amounts and under what circumstances those adjustments will be made);
- (7) The amount, if any, of the tenant's monthly rent which is to be applied toward the purchase price;
- (8) The period of time during which the tenant may exercise his right to buy the property;
- (9) A statement of any encumbrances known or that could be reasonably ascertained against the property;
- (10) A statement requiring the landlord to deliver a general warranty deed on completion of the contract, or the best deed that is available when the landlord is legally unable to deliver a general warranty deed;
- (11) A provision that the landlord provide evidence of title at closing (upon exercise of option);
- (12) A provision that the landlord provide a description of the landlord's ownership interest in the property and specify where documentation showing the landlord's ownership interest is located;
- (13) A statement of any pending order of any public agency against the property;
- (14) A statement that any and all liens and mortgages against the property shall be removed by the landlord at the time of the closing, excepting and specifying those to be assumed by the tenant;
- (15) A statement that, prior to the execution of the Residential Lease Option Contract, the tenant has received and reviewed the City of Cincinnati's Mandatory Lease Option Pamphlet, explaining the rights and obligations of the tenant and the landlord under a Residential Lease Option Contract;

(16) A statement that the tenant has received, reviewed, and signed, prior to the execution of the option agreement, a completed copy of the State of Ohio Property disclosure form for residential real property transfers;

(17) A statement that upon demand, but no more than twice in each 12 month period, the landlord will provide within 10 days a reconciliation of:

(a) The tenant's purchase price as of the date of the statement;

(b) Any calculations used to reach that price, showing all credits toward the purchase price and all additions to it; and

(c) A statement that this reconciliation shall either be delivered in person, with the tenant signing a copy of the statement as evidence of receipt, or by registered mail to the property address, with the return receipt serving as evidence of receipt.

Sec. 872-7. Option Fee Statement Requirements; Maximum Option Fee.

(1) The Residential Lease Option Contract shall also contain the amount of the option fee, including a statement as to what portion, if any, of the option fee will be credited against the purchase price upon successful execution of the option to purchase by the tenant; and the following statement printed clearly and conspicuously in bold face type, all caps, and be no smaller than 14 pt. font: THIS OPTION FEE IS NOT A SECURITY DEPOSIT, AND MAY NOT BE REFUNDABLE IF YOU DO NOT BUY THE PROPERTY FOR ANY REASON;

(2) The maximum amount a landlord may collect at the execution of the Residential Lease Option Contract for the option fee shall not exceed 1 ½ times the rent the first year and shall not exceed 1 ½ times the rent, in subsequent years. The option fee shall not exceed 4 times the monthly rent during the entire term of the Residential Lease Option Contract.

Sec. 872-9. Statements required to be furnished to Tenant; Record to be maintained by the Landlord.

(1) Prior to the execution of a Residential Lease Option Contract, the landlord shall furnish to the tenant the following:

(a) A copy of the City of Cincinnati's Mandatory Lease Option Pamphlet, explaining the rights and obligations of the tenant and the landlord under a Residential Lease Option Contract.

(b) A completed copy of the State of Ohio Property disclosure form for residential real property transfers as required by Section 5302.30 of the Ohio Revised Code.

(2) Upon execution of a Residential Lease Option Contract, the landlord shall furnish to the tenant the following:

(a) A copy of the Residential Lease Option Contract signed by both the landlord and the tenant;

(b) A completed copy of the State of Ohio Property disclosure form for residential real property transfers signed by both the landlord and the tenant;

(c) Landlord's failure to provide an executed copy of the State of Ohio Property disclosure form for residential real property transfers shall entitle tenant to all remedies outlined in Section 5302.30 of the Ohio Revised Code;

(d) A copy of a written receipt, executed and dated by each tenant under a Residential Lease Option Contract, stating that the tenant has received and reviewed the Mandatory Lease Option Pamphlet. In addition, the landlord shall maintain the original of this receipt during the period that the Residential Lease Option Contract is in effect;

(e) Landlord's failure to provide the City of Cincinnati's Mandatory Lease Option Pamphlet to the tenant shall entitle the tenant to cancel the Option Agreement and, if so canceled, receive a refund of the option fee paid upon execution of the Residential Lease Option Contract;

(f) Any and all other documents required by federal, state, or city law to complete a residential lease.

Sec. 872-11. Property Disclosure Form for residential real property transfers.

(a) When Property Disclosure Form is Applicable:

This section applies to any transfer of residential real property that occurs on or after October 1, 2004, by residential lease option contract. For purposes of this section, a transfer occurs when the initial contract for transfer is executed, regardless of when legal title is transferred, and references in this section to transfer offers and transfer agreements refer to offers and agreements in respect of the initial contract for transfer.

Except as provided in division (D) of this section, every person who intends to enter into a residential lease option contract and/or transfer any residential real property on or after October 1, 2004, by residential lease option contract shall complete all applicable items in a property disclosure form required by section 5302.30 of the Ohio Revised Code and shall deliver in accordance with the requirements of section 5302.30 of the Ohio Revised Code. Additionally, a signed and dated copy of the completed form shall be delivered to each prospective tenant or his agent as soon as is practicable, according to the requirements of section 5302.30 of the Ohio Revised Code.

(b) Property Disclosure Form Contents:

Residential Lease Option Contracts shall include a Residential Property Disclosure Form. The Residential Property Disclosure Form (the "form") shall be the State of Ohio Department of Commerce, Residential Property Disclosure Form (form OAC 1301:1-4-10), required pursuant to section 5302.30 of the Ohio Revised Code and rule 1301:1-4-10 of the Ohio Administrative Code.

Generally, this form is designed to disclose material matters relating to the physical condition of the property to be transferred, including, but not limited to, the source of water supply to the property; the nature of the sewer system serving the property; the condition of the structure of the property, including the roof, foundation, walls, and floors; the presence of hazardous materials or substances, including lead-based paint, asbestos, urea-formaldehyde foam insulation, and radon gas; and any material defects in the property that are within the actual knowledge of the landlord.

(C) The form shall be governed by section 5302.30 of the Ohio Revised Code. All requirements under section 5302.30 of the Ohio Revised Code must be complied with as part of a Residential Lease Option Contract.

Sec. 872-13. Enforcement by Tenant.

Upon the failure of any landlord to substantially comply with sections 872-5, 872-7, 872-9, or 872-11 of this Chapter, the landlord shall be liable for damages in favor of the tenant in an amount of not less than Ninety Dollars (\$90.00) and not more than Five Hundred Dollars (\$500.00) for each violation, together with reasonable attorney fees. With regard to violations of Section 872-7, a court may order the contract to be voided and the option returned to tenant and also order actual damages incurred by the tenant, where proved to the court's satisfaction.

Upon the failure of any landlord to comply with any other portions of this Chapter, the tenant may enforce such provisions in a municipal court, county court, or court of common pleas. Upon the determination of the court that the landlord has failed to comply with these provisions, the court shall grant appropriate relief.

Section 2. That this ordinance is an emergency measure necessary for the immediate preservation of the public peace, welfare and safety and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for

said emergency is to protect citizens and neighborhoods from predatory practices that hurt citizens of the City of Cincinnati.

Passed: _____, 2004

Mayor

Attest: _____
Clerk